

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
ARKANSAS CABLE TELECOMMUNICATIONS	)	
ASSOCIATION; COMCAST OF ARKANSAS, INC.;	)	EB Docket No. 06-53
BUFORD COMMUNICATIONS I, L.P. d/b/a	)	
ALLIANCE COMMUNICATIONS NETWORK;	)	EB-05MD-004
WEHCO VIDEO, INC.; COXCOM, INC.; and	)	
CEBRIDGE ACQUISITION, L.P.,	)	
d/b/a SUDDENLINK COMMUNICATIONS,	)	
	)	
<i>Complainants,</i>	)	
	)	
v.	)	
	)	
ENTERGY ARKANSAS, INC.,	)	
	)	
<i>Respondent.</i>	)	

**Motion of Windstream Communications, Inc., to Limit Scope of Subpoena or, in the  
Alternative, for an Extension of Time to Respond**

Windstream Communications, Inc. (“Windstream”), pursuant to 47 C.F.R. § 1.334, requests that a certain subpoena issued to it at the request of the Complainants in the above-referenced action be limited in scope, or alternatively, for additional time to respond to the subpoena, and for grounds, states:

1. On March 1, 2007, Windstream received a subpoena from the Complainants seeking documents related to Entergy Arkansas, Inc. (“Entergy”), from July 1, 1998, to the present. See Exhibit A, Subpoena.<sup>1</sup> The subpoena commanded that for a 9 year period, Windstream produce all agreements between Windstream and Entergy, all communications and

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<sup>1</sup> The attached subpoena is actually directed to CenturyTel. Complainants re-issued this exact subpoena to Windstream, but that subpoena is not in the possession of counsel at this time.

correspondence regarding an audit performed by Utility Support Systems, Inc. (“USS”), a contractor for Entergy, regarding pole attachments, all communications with Entergy regardless of the subject, all communications with Entergy regarding alleged safety concerns/violations or alleged service interruptions/outages, and all notes of the field condition of Entergy’s poles.

2. Upon receipt of the subpoena, Windstream contacted Complainants’ attorneys and informed them that it was uncomfortable with compliance with the subpoena due to an on-going dispute with Entergy Arkansas, Inc., involving rates for pole attachments, and informed the attorneys that any communications with Entergy regarding the dispute were privileged and would not be produced.

3. Despite the concerns, and in a good faith effort to comply with the subpoena, Windstream produced approximately 10 pages of records, on April 25, 2007, consisting of letters from USS regarding an audit of pole attachments on Entergy’s poles (“April Document Production”).

4. Windstream produced these records even though the documents should have been readily available to the Complainants from Entergy, at party, or at the very least, USS, Entergy’s contractor. At the time of production, Windstream admittedly agreed to produce attachments referenced in the USS letters if located. At the time of the representation, Windstream believed the attachments were similar in nature to the ones produced as part of the April Document Production.

5. After this production, a box of documents, containing well in excess of 1,000 pages, was located by Windstream employees. It appears that the documents located may be the attachments referenced in the USS letters. The documents include large maps and numerous “inspection worksheets” prepared by USS, at the request of Entergy, and forwarded to

Windstream. Each of the worksheets contains the statement “Proprietary – not for disclosure without the express written consent of Utility Support Systems, Inc.” Initially, Windstream maintains that it may not produce the requested documents without USS’ express written consent.

6. More importantly, however, due to Windstream’s non-party status, the Complainants should be forced to obtain the documents they seek from Entergy or USS, who are clearly the proper source. Generally, in discovery matters, if there is a more convenient or less burdensome source for discovery, that source should be used. *F.R.C.P. 26(b)(2)(i)*; See *also Schaaf v. Smithkline Beecham Corp., 233 F.R.D. 451 (2005)* (noting that a court will give extra consideration to a non-party’s objections in weighing burdensomeness versus relevance).

7. Entergy and USS are unquestionably the more convenient and less burdensome sources. Windstream anticipates that Complainants will argue that they are entitled to the documents because neither Entergy nor USS has produced similar documents to date. However, Complainants have not specified whether Entergy and USS have refused to produce similar documents or whether Entergy and USS claim that the documents do not exist. Before Windstream is forced to comply with a far-reaching subpoena, the Complainants should set forth fully and in writing what documents Entergy has produced and Entergy’s and USS’ response to the Complainants’ request for documents similar to those at issue. Further, the Complainants should be forced to demonstrate to Windstream that it has exhausted its remedies against Entergy by seeking appropriate orders compelling Entergy to produce documents.

8. Furthermore, by analogy, if Windstream were a party in an action with Entergy, it would have a legitimate objection to producing the documents in question on the basis that there are already in the possession of another party. Windstream should be given at least equal

protection as a party, and, in fact, more protection, as a non-party with no interest in this litigation. Thus, Windstream requests that the presiding judge limit the Complainants' subpoena to documents already produced on the basis that the Complainants have failed to adequately demonstrate the unavailability of the documents from more relevant sources.

9. Additionally, complying with the subpoena creates an undue hardship for Windstream due to the voluminous nature of these documents. Producing in excess of 1000 pages is overly burdensome when Windstream has, in fact, complied with the subpoena by producing the documents that comprise the April Document Production. The documents already produced by Windstream demonstrate the USS conducted a pole attachment audit, provided Windstream with notice of alleged violations, and requested correction of alleged violations. Requiring the production by a non-party of voluminous supporting documentation is unreasonable.

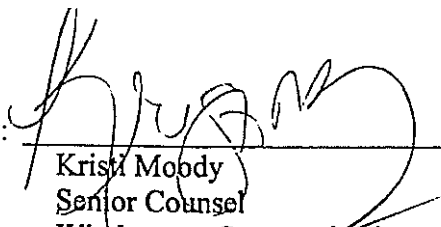
10. Moreover, some of the documents contain personal notes made by Windstream employees while reviewing the documents that constitute privileged work product. These notes are the mental impressions of Windstream employees regarding the allegations in the documents. It is simply unfair to require Windstream to produce the mental impressions when those impressions will be used by counsel in making strategic decisions regarding the pole attachment at issue. Equally important, there is no benefit to the Complainants in receiving and reviewing the mental impressions of Windstream employees made after receipt of the documents and not in consultation with Entergy or USS. Thus, Windstream should not be forced to review each page of the documents in question to pinpoint these notes for redaction. Instead, Windstream should be excused completely from producing said documents.

11. Finally, it remains unclear how the documents outlining Windstream alleged attachment violations are relevant to the Complainants' claims against Entergy. Windstream points out that the worksheets purport to outline alleged violations, but are not actual proof of a violation or proof of any action on Entergy's part. Thus, the documents are actually not indicative of anything, except that USS performed an audit and asserted an alleged violation -- information already known by the Complainants and disclosed by Windstream in the April Document Production.

12. For the reasons stated herein, Windstream requests that the presiding judge limit the subpoena to the records already produced.

13. Alternatively, if it is determined that the subpoena should not be limited, Windstream requests an extension of time to comply with the subpoena to 14 days after receipt of sufficient evidence of non-compliance by Entergy and USS to Complainants' records request. This extension is reasonable and necessary due to the voluminous nature of the requested documents that must be reviewed. Further, Windstream requests that if ordered to produce the documents, it be allowed to redact employee notes added after receipt for the reasons stated above.

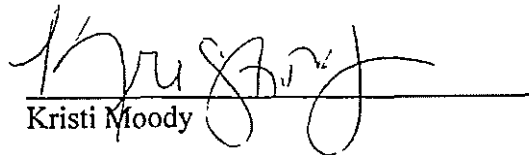
WHEREFORE, Windstream Communications, Inc., requests that its Motion be granted and for all other just and proper relief to which it may be entitled.

By:   
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Senior Counsel  
Windstream Communications, Inc.  
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[Kristi.Moody@ijj.windstreain.com](mailto:Kristi.Moody@ijj.windstreain.com)  
Arkansas Bar No. 95164

**CERTIFICATE OF SERVICE**

On this 25<sup>th</sup> day of May, 2007, I certify that a true and correct copy of the foregoing Motion was forwarded via facsimile and regular mail to:

Dominic Perella  
Paul Werner  
Hogan & Hartson LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20005  
Fax No. 202.637.591 0

  
Kristi Moody

## SUBPOENA

DUPLICATE - To be served upon the person named herein, retained by him, and presented in support of any claim for witness fees or mileage allowances for testimony on behalf of the FCC.

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF

Arkansas Cable Telecomms Ass'n, et al.,  
Complainants v.  
Entergy Arkansas, Inc.  
Respondent.

EB Docket No. 06-53  
EB-05-MD-004

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To Windstream Corporation, c/o The Recordkeeper  
4001 Rodney Parham Road, Little Rock, AR 72212 . . . GREETINGS

YOU ARE HEREBY ORDERED under penalty of law to appear before the Federal Communications Commission or

Hogan & Hartson, LLP at 555 13th Street. N.W.  
(Name and official title of person authorized to take depositions)

in the city of Washington, DC 20004 on the 30th day ~~XXX~~ after the subpoena is signed, ~~XX~~ 2007,  
at ~~9:00~~ o'clock ~~A~~ M, of that day, to testify in the above-captioned matter and to bring with you and to  
produce then and there the following books, papers, and documents: \_\_\_\_\_  
See attached Schedule A.

BY ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION, this 23rd day of

February, 2007, at

*Arthur A. Lewis*  
(Official Title)  
U.S. Admin. Law Judge

NOTICE: - Witness fees and mileage for attendance under this subpoena for service hereof are to be paid by the party at whose instance the witness is subpoenaed, and every copy of this summons for the witness must contain a copy of this notice.

Service of subpoenas may be made by any citizen of the United States over the age of 18 years who is competent to be a witness, and is not a party to or in any way interested in the proceeding.

EXHIBIT A

FCC Form 766  
October 1985

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

ARKANSASCABLE  
TELECOMMUNICATIONS  
ASSOCIATION: COMCAST OF  
ARKANSAS, INC.; BUFORD  
COMMUNICATIONS I, L.P. d/b/a  
ALLIANCE COMMUNICATIONS  
NETWORK; WEHCO VIDEO, INC.; COXCOM,  
INC.; and CEBRIDGE ACQUISITION, L.P.,  
d/b/a SUDDENLINK COMMUNICATIONS,

EB Docket No. 06-53

EB-05-MD-004

*Complainants,*

v.

ENTERGY ARKANSAS, INC.,

*Respondent.*

SCHEDULE A

Pursuant to the Subpoena Duces Tecum, a copy of which is attached hereto, you are commanded to produce, no later than thirty days from the date after which the Administrative Law Judge has signed the subpoena, in accordance with Definitions and Instructions set forth below, the following documents, books, and papers related to the above-captioned matter within the time set forth in the accompanying subpoena:

DEFINITIONS AND INSTRUCTIONS



1. "Complainants" means Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; CoxCom, Inc. and Cebridge Acquisitions, L.P., d/b/a Suddenlink Communications.

2. "Entergy" or "EAI" or "Respondent" mean Entergy Arkansas, Inc., including subsidiaries, affiliates and parent companies.

3. "You" or "yours" mean CenturyTel, Inc., including subsidiaries, affiliates, parents companies, contractors, subcontractors, representatives, agents and employees.

4. "Document" as used herein means a document whose existence is known to CenturyTel, regardless of the document's location, including the original and any copy (regardless of origin) and all drafts of correspondence, records, tables, charts, graphs, pictures, schedules, appointment books and calendars, diaries, reports, memoranda, notes, letters, booklets, circulars, bulletins, notices, instructions, minutes and other communications, including E-mail messages or correspondence and electronically stored materials of any type, video or audio tapes or CD ROMs and computer disks, interoffice and intraoffice communications, questionnaires, data sheets or data processing cards, surveys and other written, recorded, printed, typed and transcribed matter, or other matter of any kind or nature however produced or reproduced, and each copy of any of the foregoing which is not identical because of marginal notations or otherwise. This definition and these instructions also include downloading any documents or data bases from computers into hard copy or paper

printouts. If any such document was, but no longer is, in CenturyTel's possession, custody or control, state what disposition was made of it and when.

5. "Possession, custody or control" includes the joint or several possession, custody and control by each or any other person in the employ of, or acting on behalf of, CenturyTel, whether as attorney, agent, official, sponsor, spokesperson, employee or otherwise.

6. "Relate(s)(d) to" means supports, evidences, describes, mentions, memorializes, constitutes or refers to.

7. "~~Or~~" shall be read as inclusively as possible. to include "or," "and," and "both."

8. "ACTA shall mean Complainant Arkansas Cable Telecommunications Association.

9. Unless otherwise specified in a particular request, these requests call for documents related to the time period from January 1, 1998 to the present.

10. If any document called for in these requests is withheld on the basis of a claim of privilege, please set forth the nature of the information with respect to which the privilege is claimed, together with the type of privilege claimed, a statement of all the circumstances on which CenturyTel will rely to support such a claim of privilege, the date and topic of the document, and a list of those in the possession, custody or control of such document or copies thereof.

11. If any document called for in these requests is withheld pursuant to an objection, state the basis for the objection and produce those documents to which the objection does not apply. Without limiting the generality of the foregoing, if any document called for in these requests is withheld pursuant to an objection as to the period for which information *is* requested, state the basis for the objection and produce those documents for the period to which the objection does not apply.

12. Each document produced pursuant to these requests shall be separated and labeled so that it is clear as to which particular request the document relates. In the event that a document is relevant to multiple requests, it is only necessary to produce said document once and to identify it as being responsive to each request to which it responds.

13. In producing the documents requested herein, please produce them in their original file folders, if any, or in lieu thereof, attach to the set of documents produced from a given file a photographic or electrostatic duplicate of all written or printed material on the original file folder. In addition, the documents shall be produced in the same sequence as they are contained or found in the original file folder. The integrity and internal sequence of the requested documents within each folder shall not be disturbed. Under no circumstances shall documents from any file folder be commingled with documents from any other file folder.

14. If any document, or any part of a document, called for in any request has been destroyed, discarded, lost or otherwise disposed of, or placed beyond your possession, custody, or control, you are requested to provide a list setting forth

each such document. Such list shall include identification of the author, recipient, date, and description of each document and an explanation of why the document is no longer in your possession, custody, or control. With specific reference to destroyed documents, the list shall include whether the destruction of the listed document was inadvertent or intentional and, if the destruction was intentional, whether the destruction was part of a company policy relating to the destruction of documents.

15. After producing the documents requested herein, if additional documents responsive to these requests become known to CenturyTel but not produced with prior responses, CenturyTel is requested to promptly further supplement its response to these requests.

#### **DOCUMENTS TO BE PRODUCED**

1. Produce all documents relating to agreements between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, for any work, labor, or service performed at the request of or on behalf of Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, including, but not limited to, contracts, exhibits, schedules, attachments, diagrams, addendums, and modifications of these documents.

2. Produce all documents which constitute or relate to correspondence, memoranda, e-mails, and other communications between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, as well as any of their agents, contractors, subcontractors, employees, or any other entity relating to the costs

of any audit and inspection performed by USS of your attachments and/or facilities on Entergy's poles.

3. Produce all documents which constitute or relate to correspondence, memoranda, e-mails, and other communications between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, as well as any of their agents, contractors, subcontractors, employees, or any other entity relating to any alleged violation attributed to your attachments and/or facilities on Entergy's poles.

4. Produce all documents which constitute or relate to correspondence, memoranda, e-mails, and other communications between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, as well as any of their agents, contractors, subcontractors, employees, or any other entity relating to Complainants.

5. Produce all documents which constitute or relate to correspondence, memoranda, e-mails, and other communications between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, as well as any of their agents, contractors, subcontractors, employees, or any other entity relating to safety concerns or violations attributed to your or any other communication company's, including without limitation cable attachers', facilities.

6. Produce all documents which constitute or relate to correspondence, memoranda, e-mails, and other communications between you and Entergy, as well as any known predecessor, parent, subsidiary or division of Entergy, as well as any of their agents, contractors, subcontractors, employees, or any other entity relating to Entergy's service interruptions and system outages.

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7. Produce all documents which constitute notes, minutes, diary books, or journals, whether taken by you, your personnel, representatives or agents, or other parties, which relate to the field condition of Entergy's poles, including but not limited to pole or circuit history, and systemic maintenance problems.

8. Produce any and all additional documents, not produced in response to the other Requests, which relate to the above-captioned proceeding.